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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE:	§	CHAPTER 11 CASE
SEARS HOLDINGS CORPORATION,	§	
<i>et al.</i>¹,	§	CASE NO. 18-23538 (RDD)
DEBTORS.	§	(Jointly Administered)
	§	

**WAL-GO ASSOCIATES LLC'S CURE CLAIM OBJECTION
FOR STORE 9122 (WARSAW, INDIANA)**

TO THE HONORABLE ROBERT D. DRAIN, UNITED STATES BANKRUPTCY JUDGE:

Wal-Go Associates LLC (“Wal-Go”) files this Objection to the Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction [Docket No. 1731] (the “Cure Notice”) and in support thereof would show as follows:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Sears Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); Service Live Inc. (6774); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Inovel Solutions, Inc. (7180); Kmart Corporation (9500); Max Serv, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); My Gofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); Star West, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); and Sears Brands Management Corporation (5365). The location of the Debtors’ corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

I. BACKGROUND

1. On October 15, 2018 (“Petition Date”), Sears Holdings Corporation and several of its affiliates, including Kmart Corporation, filed voluntary petitions under chapter 11 of the Bankruptcy Code. The Debtors are operating their business and managing their affairs as debtors-in-possession under 11 U.S.C. §§ 1107 and 1108.

2. As of the Petition Date, Wal-Go was the landlord and Kmart Corporation (“Debtor”) was the tenant under a lease of nonresidential real property located in Warsaw, Indiana (Kmart Store No. 9122) dated as of April 27, 1976, as amended and modified from time to time (“Lease”). C&W Manhattan Associates was the original lessor, the Lease was subsequently assigned and is currently held by Wal-Go.

3. On January 18, 2019, the Debtors filed and served Wal-Go with its *Cure Notice*, including amounts the Debtors believe were required to cure all defaults then existing under such contracts to be assumed (the “Cure Amounts”).

4. The Debtors indicated in the Cure Notice that they intend to assume the Lease with Wal-Go (the “Proposed Assumed Contract”).

5. Pursuant to the Cure Notice, the Debtors identified \$0.00 as the amount which it alleges to be owing Wal-Go under the Proposed Assumed Contract.

6. Wal-Go agrees to the assumption of Proposed Assumed Contract with the Debtors; however, Wal-Go disputes the Proposed Cure Amount in the Cure Notice. Wal-Go’s books and records reflect a cure amount is not less than \$54,808.20. Please see the attached Exhibit A.

II. OBJECTION TO CURE AMOUNT

7. As of the Petition Date, Wal-Go was the landlord and Kmart Corporation (“Debtor”) was the tenant under a lease of nonresidential real property located in Warsaw,

Indiana (Kmart Store No. 9122) dates as of April 27, 1976, as amended and modified from time to time (the “Lease”). Wal-Go has no objection to the assumption of the Lease provided the proper cure amount is paid.

8. The categorical breakdown of the monetary cure claim is as follows: Unpaid pre-petition real estate taxes relating to the second half of calendar year 2017 due under the Lease: \$54,808.20. See Exhibit A, attached.

9. Pursuant to 11 U.S.C. § 365(b)(1)(A), the Debtors must cure any defaults under the Wal-Go Lease in connection with any proposed assumption, as well as provide adequate assurance of future performance. In this case, Debtors’ Proposed Cure Amount of \$0.00 fails to cure the existing defaults of the Wal-Go Lease, as is required under Section 365 prior to assumption.

10. The correct cure amount is \$54,808.20 for prepetition real estate tax payment defaults under the Lease. As a result, under 11 U.S.C. § 365(b)(1)(A), in order to assume the Wal-Go Lease, Wal-Go must receive a cure payment of at least \$54,808.20. Otherwise, the Lease cannot be assumed pursuant to Section 365.

11. This Cure Claim Objection is without prejudice to the fact that other and additional cure claim amounts (a) may exist and/or may become known at a future date and (b) will accrue on an ongoing basis between the filing of this Cure Claim Objection and any subsequent assumption of the Lease. Wal-Go expressly reserves its right to amend or supplement its Cure Claim Objection though and including the effective date of any proposed assumption and assignment of the Lease.

WHEREFORE PREMISES CONSIDERED, Wal-Go prays (i) that the cure amount set forth in the Cure Notice be corrected to reflect the correct prepetition cure amount of

\$54,808.20, which represents prepetition amounts due and owing under the Wal-Go Lease; (ii) that Wal-Go be paid a cure payment of \$54,808.20 in connection with the assumption of the Lease; and that (iii) Wal-Go be awarded such other and further relief to which it may be justly entitled at law or in equity.

Dated: January 25, 2019
San Antonio, Texas

RESPECTFULLY SUBMITTED,

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By: /s/ David S. Gragg
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CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2019, a true and correct copy of the foregoing document was electronically transmitted to the Clerk of the Court using the ECF System for filing and transmitted electronically to all ECF participants registered to receive electronic notice in the bankruptcy proceeding including the parties below:

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(served via attorneys)

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(served electronically)

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/s/ David S. Gragg

David S. Gragg

EXHIBIT A

LAKE VILLAGE SHOPPING CENTER

WARSAW, INDIANA # 134

CAM, REAL ESTATE TAX, AND INSURANCE RECONCILIATION

2017-PAY 2018 Spring & Fall Tax Bill

5110	CLEANING
5111	ELECTRICITY
5112	REPAIR/LIGHTS
5113	LOT REPAIR/SIDEWALK
5114	STRIPING/CRACKFILL
5115	LAWN CARE
5116	SNOW REMOVAL
5117	MISC.
5118	TRASH REMOVAL
5124	SECURITY
5125	REPAIRS GENERAL
5126	REPAIRS SIGNAGE
5129	PAINTING
5310	WATER
5317	FIRE PROTECTION
5417	MANAGEMENT FEE

N/A

SUB TOTAL (CAM)	0.00
TOTAL CAM EXPENSE	0.00

DATE: December 6, 2018

TO: KMArt #9122
LAKE CITY HIGHWAY
WARSAW, IN 46580

FROM: Wal-Go Associates, LLC.
c/o Resource Commercial Real Estate, LLC
9339 Priority Way West Drive, Suite 120
Indianapolis, IN 46240

ATTN: Ron Escue 317-460-8393

88908 s.f. divide by Your prorata share	170744 SF 52.07%
0.00 psf FIXED CONTRIBUTION M/E/P X -	0.00
TOTAL CAM DUE	

5710	INSURANCE LIABILITY
	INSURANCE OTHER
	INSURANCE UMBRELLA
	<hr/>
	SUB TOTAL INSURANCE 0.00
	<hr/>
	PLUS ADMINISTRATIVE 0.00
	<hr/>
	TOTAL INSURANCE 0.00

88908 s.f. divide by Your prorata share	170744 SF 52.07%
0.00 psf NOT APPLICABLE M/E/P/ 0 X 0.00 -	0.00 0.00
TOTAL INSURANCE DUE	0.00

BILLED	PAID
\$ 52,632.38 R.E. TAX (SPRING)	\$ 54,018.56
\$ 52,624.42 R.E. TAX (FALL)	\$ 51,238.24
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\$ 105,256.80 SUB TOTAL (R.E. Tax)	\$ 105,256.80
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PLUS ADMINISTRATIVE	0.00
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TOTAL R.E. TAX	\$ 105,256.80

88908 s.f. divide by Your prorata share	170744 SF 52.07%
0.62 psf R.E. TAX CHARGE	\$ 54,808.20
AMOUNT DUE	\$ 54,808.20
DEDUCTABLE % RENT 58% \$	31,788.76
NOT DEDUCTABLE 42% \$	23,019.44
TOTAL R.E. TAX DUE	\$ 54,808.20
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TOTAL CHARGES DUE	\$ 54,808.20
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Total Charges Due	\$ 54,808.20

SF- SQUARE FOOT
PSF- PER SQUARE FOOT
MEP- MONTHLY ESTIMATE PAYMENTS